IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1461 of 1994
and
FIRST APPEAL NO. 1462 of 1994
with
CIVIL APPLICATIONS NOS. 4735 & 6601 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ROMAN CATHOLIC CHURCH

Appearance:

1. First Appeal No. 1461 of 1994
   MR KT DAVE, AGP for appellant
   MR SM SHAH & MR MEHUL S SHAH for Respondent No. 1
   MR AK CLERK for for Respondent No. 2
2. First Appeal No. 1462 of 1994
   MR KT DAVE, AGP for appellant
   Notice served for respondents Nos.1/1 to 1/6
   MR AK CLERK for respondent No.2
3. Civil Application No.4735 of 2003

MR AK CLERK for applicant
MR SM SHAH & MR MEHUL S SHAH for respondent No.1
MR KT DAVE, AGP for respondent No.2

4. Civil Application No. 6601 of 2003
MR AK CLERK for applicant
MR KT DAVE, AGP for respondent No.1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/09/2003

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Both these appeals under Section 54 of the Land Acquisition Act, 1896 read with Section 96 of the Civil Procedure Code, 1908 are filed by the State of Gujarat, challenging the common judgment and award passed by the learned Joint District Judge, Rajkot, dated 17.4.1993 in Land Reference Cases Nos.96 of 1981 and 97 of 1981. It may be stated that the above two Land Reference Cases have been directed against the award dated 18.8.1981 passed by the Special Land Acquisition Officer in Land Acquisition Case No.5 of 1973, by which the Land Acquisition Officer determined the market value of the land at the rate of Rs.200/- per sq.mtr. and also awarded Rs.12,915/- for the super structure which was demolished because of the acquisition.

2. The Rajkot Municipal Corporation proposed to widen the Dhebar road situated in Ward No.2 in the Rajkot City and for that purpose, the land situated in Ward No.2 in the Rajkot City, owned by the Roman Catholic Church, under Reverend Father, James Travesa, was notified for acquisition and for the said purpose, the Municipal Corporation published notification under Section 4 of the Land Acquisition Act, 1896 (for short, 'the Act') in the Gujarat Government Gazette dated 17.10.1974. The land under acquisition is situated on the western side of Dhebar Road on the junction of Kothi Road and Mochi Bazar Road, which is in the form of strip having minimum width of about 6 mtrs. and it starts from the junction and ends on Vonkla in the south. The land under acquisition is admeasuring 583.80 sq.mtrs. as can be seen from the notification under Section 6 of the Act. It further appears that out of this land, the land admeasuring 80.48 sq.mtrs. is built up area while the remaining portion admeasuring 503.32 sq.mtrs. is open area. It further

appears that the built up portion consists of two storey structure, the ground floor of which is used by tenant for commercial purpose like hotel, pan shop, and tyre selling shop and the first floor is used by the Church and the land is fenced by cactus hedge on south and a compound wall on eastern side abutting on Dhebar Road. The Special Land Acquisition Officer determined the market value of the open land at the rate of Rs.200/- per sq.mtr. and awarded Rs.12,914/- for the super structure.

3. Being dissatisfied by the said award, the owner of the land and the tenant of the premises submitted reference cases under Section 18 of the Act, on various grounds. The owner of the land prayed that his reference case be allowed and the market rate of the acquired land be determined at the rate of Rs.1,500/- per sq.mtr., while the tenant who was in possession of Punjab Hotel as tenant of the Church contended that the compensation of Rs.4,740/- awarded by the Land Acquisition Officer is inadequate and unjust. He contended that the Land Acquisition Officer has not awarded the amount of loss of business, amount of goodwill etc. and thus, he prayed that Rs.1,50,000/- be awarded to him.

The Municipal Corporation as well as the State of Gujarat supported the award of the Land Acquisition Officer in toto by contending that the award passed by the Land Acquisition Officer is adequate and both the references deserve to be rejected.

4. The learned Joint District Judge, Rajkot, by his common judgment and award dated 17th April 1993, partly allowed both the references with proportionate cost. In Land Reference Case No.96 of 1981, he directed the original opponents to pay additional amount of compensation of Rs.1,74,745/- with running interest at the rate of 9% per annum for the first year from the date of possession and at the rate of 15% per annum for the subsequent years till the date of realisation.

In Land Reference Case No.97 of 1981, the learned Judge directed the original opponents to pay additional amount of compensation of Rs.45,900/- with running interest at the rate of 9% per annum for the first year from the date of possession and at the rate of 15% for the subsequent years till the date of realisation.

Over and above the amount of compensation referred to above, the Reference Court also declared that the claimants in both the Reference cases are entitled to get additional amount at the rate of 12% per annum and

therefore, the original opponents to pay additional amount at the rate of 12% per annum i.e. on Rs.1,74,745/- in Land Reference Case No.96 of 1981, and on Rs. 45,900/- in Land Reference Case No.97 of 1981 on such market value for the period commencing on and from the date of publication of the notification under Section 4 of the Act, i.e. 17.10.1974 till the date of the order of the Collector or the date of taking possession of the land whichever is earlier.

Besides the above, the Reference Court declared that the claimants shall be entitled to solatium at the rate of 15% on the above market value of the additional amount of compensation of Rs.1,74,745/- in Land Reference Case No.96 of 1981 and Rs.45,900/- in Land Reference Case No.97 of 1981.

5. Learned AGP Mr.K.T.Dave has challenged the impugned award in both the cases by contending that the Reference Court has committed an error in holding that the claimants have proved that the compensation awarded by the Land Acquisition Officer is inadequate. In the submission of learned AGP, the claimants have failed to make out a case for getting the additional compensation.

6. After having gone through the reasonings recorded and the ultimate conclusion reached by the Reference Court, we are of the view that the Reference Court has given cogent and convincing reasons, after appreciating the evidence on record while determining the market value of the land as well as the super structure. In this view of the matter, we hardly see any ground to interfere as far as the additional amount awarded by the Reference Court is concerned. Since we are in total agreement with the reasonings and the conclusions of Reference Court, it is not necessary for us to re-appreciate the evidence discussed by the Reference Court. In view of this, we see no reason to interfere as far as the additional amount of compensation of Rs.1,74,745/- awarded with respect to the land and Rs.45,900/- with respect to the super structure is concerned. We may add here that learned AGP has virtually accepted this finding of the Reference Court, and therefore, we are not discussing it in detail.

7. The only ground on which our interference is called for and that is with respect to the additional amount at the rate of 12% for the period commencing on and from the date of publication of the notification under Section 4 of the Act, i.e. 17.10.1974 till the date of the order of the Collector or the date of taking

possession of the land whichever is earlier as directed by the Reference Court. In this regard, we are of the opinion that by virtue of the decision rendered by the Apex Court in the case of K.S.Paripoornan v. State of Kerala and ors., reported in (1994) 5 SCC 593, the claimants are not entitled to get the said benefit. The Reference Court awarded additional amount of compensation, relying on the decision rendered by the Apex Court in the case of Union of India and ors., v. Zora Singh, reported in 1992 (1) SCC 673 wherein the Apex Court has held that the applicant is entitled to get additional amount of compensation as provided in amended Section 23(1-A) of the Land Acquisition Act at the rate of 12% per annum on the market value for the period commencing on and from the date of publication of the notification under Section 4 to the date of the award of the Collector or taking possession of the land whichever is earlier.

While granting the said benefit, the Reference Court has observed that the decision in the case of Zora Singh is under consideration by the Larger Bench of the apex Court. The Larger Bench of the Apex Court in the case of K.S.Paripoornan (supra) over-ruled the decision rendered in Zora Singh's case (supra). It is observed in the said decision that,

> ".... in relation to proceedings which were initiated prior to the date of the commencement of the amending Act Section 23(1-A) would be applicable only to those cases which fall within the ambit of clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act..... For the reasons aforementioned we are unable to subscribe to the view taken in Zora Singh that sub-section (1-A) of Section 23 would apply to all proceedings pending in the reference Court on the date of commencement of the amending Act irrespective of the date on which award was made by the Collector. In our opinion, provisions of Section 23(1-A) of the principal Act and Section 30(1) of the amending Act have been correctly construed in Filip Tiago to mean that the obligation to pay additional amount in respect of proceedings initiated before the date of commencement of the amending Act is confined to the matters covered by clauses (a) and (b) of sub-section (1) of Section 30 of the amending Act and we endorse the said view."

It is also observed that,

"In respect of acquisition proceedings initiated prior to the date of commencement of the amending Act 68 of 1984, the payment of the additional amount under Section 23(1-A) of the Act will be restricted to matters referred to in clauses (a) and (b) of sub-section (1) of Section 30 of the said amending Act. Union of India v. Zora Singh insofar as it holds that the said amount is payable in all cases where the reference was pending before the reference Court on 24-9-1984, irrespective of the date on which the award was made by the Collector, does not lay down the correct law."

As far as the case on hand is concerned, Section 4 notification was published in the official Gazette on 17.10.1974 and the Special Land Acquisition Officer gave his award on 18.8.1981. Therefore, the said award is prior to the amending Act which came into force on 30th April 1984 and hence, in view of the decision rendered by the Apex Court in the case of K.S.Paripoornan (supra), the benefit granted by the Reference Court under Section 23(1-A) read with Section 30 of the Act is not available to the claimants.

8. In view of the above discussion, we partly allow both these appeals. We uphold the direction of the Reference Court ordering the original opponents to pay the claimants, the additional amount of compensation as ordered in both the Reference cases with running interest at the rate of 9% per annum for the first year from the date of possession and at the rate of 15% per annum for the subsequent years till the date of realisation. We also confirm the finding that the claimants shall be paid solatium at the rate of 15% on the additional amount awarded in both the Reference cases. We however set aside the direction of the Reference Court, that the claimants are entitled to get additional compensation at the rate of 12% per annum for the period commencing on and from the date of publication of the notification under Section 4 of the Act, i.e. 17.10.1974 till the date of the order of the Collector or the date of taking possession of the land whichever is earlier. Order accordingly. Both the appeals are allowed to the above extent only, with no order as to costs. Decree to be drawn accordingly. Office to send the writ of this order forthwith.

9. In view of the order passed in the main appeals, both the Civil Applications Nos.4735 of 2003 and 6601 of 2003 stand disposed of.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)

Sreeram.